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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. CR 10-0859 RS
	)	
Plaintiff,	)	THE UNITED STATES' MOTION TO STRIKE
	)	AND OPPOSITION TO DEFENDANT'S
v.	)	RENEWED MOTION TO DISMISS COUNT TWO
	)	UNDER THE EX POST FACTO CLAUSE
GARY LEE HARDEMAN,	)	
	)	Date: July 10, 2013
Defendant.	)	Time: 1:00 p.m.
	)	Place: Courtroom 3, 17th Floor

Hardeman has renewed his motion to dismiss count two on ex post facto grounds, ostensibly based on the Supreme Court's recent decision applying the Ex Post Facto Clause to advisory sentencing guidelines that increased the recommended punishment for an offense after the defendant had committed it. *Peugh v. United States*, 133 S. Ct. 2072 (2013).

The Court should strike Hardeman's motion for failing (once again) to follow the procedure for motions to reconsider outlined in this District's local rules, specifically the requirement that he seek the Court's leave before filing such a motion. Northern District Local Rule 7-9.

1 But if the Court is inclined to reach the merits of Hardeman's motion, it should conclude that the  
2 motion has no basis in the law. The Supreme Court's decision in *Peugh* is irrelevant to any issue in this  
3 case. In *Peugh*, the Supreme Court held that the application of sentencing guidelines to a defendant at  
4 sentencing that were higher than the sentencing guidelines in effect when the defendant committed the  
5 crime violated the Ex Post Facto Clause because they increased the punishment for a previously-  
6 committed crime, even though the sentencing guidelines were no longer mandatory. 133 S. Ct. at 2084.  
7 The Supreme Court did not address recidivism statutes, or suggest that any aspect of the Ninth Circuit's  
8 reasoning in this case was no longer correct. The *Peugh* opinion does not even include dicta that bears on  
9 the Ninth Circuit's decision.

10 The Court should strike or deny Hardeman's renewed motion to dismiss.

11 DATED: July 3, 2013

Respectfully submitted,

12 MELINDA HAAG  
13 United States Attorney

14 /s/

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